



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII, MONTANA OFFICE
FEDERAL BUILDING, 301 S. PARK, DRAWER 10096
HELENA, MONTANA 59626-0096

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Ref: 8MO

June 12, 1996

Mr. Larry E. Hamilton, State Director
Bureau of Land Management
222 North 32nd Street
P.O. Box 36800
Billings, Montana 59107-6800

Re: Final Sweet Grass Hills RMP
Amendment and EIS

Dear Mr. Hamilton:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the Environmental Protection Agency, Region VIII, Montana Office (EPA) reviewed the Final Sweet Grass Hills Amendment to the West HiLine Resource Management Plan (RMP) and Final Environmental Impact Statement (FEIS)

The EPA is pleased to see the BLM respond to public concerns to protect areas in the Sweet Grass Hills of Native American spiritual importance, diverse wildlife populations, high value recreational lands, and potable aquifers important to local residents, by considering alternative management options. We are also pleased that the BLM modified the preferred alternative, Alternative C, in the FEIS to recommend to the Secretary of Interior to withdraw all Federal minerals in the Sweet Grass Hills ACEC from locatable mineral entry (i.e., 19,765 acres).

The EPA recognizes that the BLM is proposing to provide protection to the Sweet Grass Hills that is within BLM's statutory authority. We are concerned, however, that the BLM cannot ensure protection of traditional Native American spiritual values or aquifers that provide potable water to local residents without the acquisition of patented or valid unpatented mining claims.

We note that uncertainty is evidenced in the FEIS regarding the future potential for mining in the Sweet Grass Hills with the preferred alternative. It is stated in the FEIS (page 32) that it is unlikely that a mine would be developed with the preferred alternative since a withdrawal further limits opportunities for

economies of scale that would otherwise be present with adjacent lands being open to mineral entry.

However, it is also indicated on page 32 of the FEIS that the foreseeable hardrock exploration and development described in Appendix A could still occur on private minerals, Federal minerals (any valid claims), or most likely a combination of private and Federal minerals with the preferred alternative (i.e., 1,252 acres with Federal surface/private minerals and 100 acres of Federal minerals on eight valid mining claims). The FEIS also states that the proposed Royal East Joint Venture Exploration Project could be processed in the future and some or all of that proposed mining activity could occur (page 34).

The foreseeable mining scenario described in Appendix A of the FEIS includes an open pit, gold-silver mine using the cyanide heap leaching process or a small 100 ton per day underground mine with cyanide vat leaching. The watershed impacts discussion in Chapter 4 of the FEIS (page 41) states that impacts to water resources from exploration, underground mine development, or open pit heap leach development could occur under the preferred alternative.

The EPA is, therefore, still concerned about possible adverse environmental impacts associated with the remaining reasonably foreseeable mining scenarios that could occur. As stated in the FEIS, "given past and recent mining history it is reasonable to assume a release of contaminants to surface and/or ground waters could occur sometime during the mine's life, either through a spill, leak, or acid rock drainage." Releases of contaminants from mining operations, most likely to occur in the Tootsie Creek drainage, would migrate down gradient towards seeps and springs on the east side of East Butte which serve as a source of domestic water for area residents (page 41).

Protection of traditional spiritual values of Native Americans and aquifers that provide potable water to local residents cannot be ensured if underground or open pit mining using the cyanide heap leaching process occurs. As stated in the FEIS (page 45), "A mining operation within the Tootsie Creek basin could result in the permanent loss of traditional Native American spiritual practices associated with this area. Further since this area contains the traditional paints necessary for the Sun Dance, the impact of a mine in Tootsie Creek could extend to traditional spiritual practices conducted outside the Sweet Grass Hills."

We believe that the BLM should take all possible steps to protect the valuable resources in the Sweet Grass Hills. The FEIS indicates that all of the high and moderate occurrence potential Federal minerals would not be available for mineral development if relinquishment of valid claims were to occur.

We recommend, therefore, that the BLM revise the preferred alternative to discourage further exploration and development on remaining valid claims, and pursue relinquishment of valid claims through purchase, exchange, condemnation, or conservation easements from private sources. Acquisition of such mining claims within or adjacent to the Sweet Grass Hills ACEC is needed to insure protection of traditional Native American spiritual values and aquifers that provide potable water to local residents.

We believe Congressional approval should be requested, if need be, for such purchase or condemnation of mining claims in order to insure that the purpose and need for the RMP Amendment are met. The Sweet Grass Hills RMP Amendment and EIS should be provided to Congress for their review of provisions of the 1872 Mining Law because the EIS may serve as the basis for modifying Congressional approval or funding in light of NEPA's goals and policies.

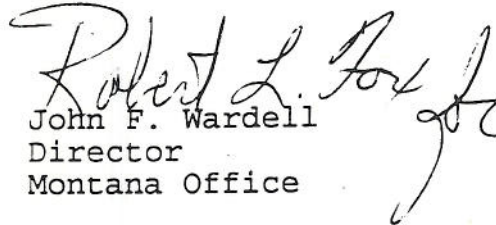
The EPA considers Alternative B to be the environmentally preferable alternative since it would involve discouragement of further exploration and development on remaining valid claims, and relinquishment of valid claims through purchase, exchange, condemnation, or conservation easements from private sources. We believe this alternative would more effectively protect the valuable resources in the Sweet Grass Hills and better promote the national environmental policy expressed in NEPA.

Finally, we note that the BLM oil and gas lease stipulations in Appendix B.1 of the FEIS do not specify controls or limitations on surface use or occupancy in or near wetlands. The BLM should recognize that wetlands are identified under Clean Water Act regulations as special aquatic sites. Wetlands are areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

President Clinton has established a National Wetlands Protection Policy (see copy attached) that supports a national goal of no net loss of wetlands. To assist in achieving this goal we recommend that the BLM include identification of wetlands as a specific aquatic resource that is to be protected during oil and gas leasing. The EPA recommends that the BLM add to its standard stipulations a stipulation to preclude occupancy within 500 feet of wetlands.

The EPA appreciates the opportunity to review and comment on the FEIS. If we may provide further explanation of our concerns please contact Mr. Steve Potts of my staff in Helena at (406) 441-1140 ext. 232. Thank you for your consideration.

Sincerely,


John F. Wardell
Director
Montana Office

Enclosure

cc: Carol Campbell/Larry Kimmel, EPA, Denver, 8EPR-EP
John Thompson/Tim Bozorth, BLM, Billings
Richard Hopkins, BLM, Great Falls
Tom Reid, MDHES-WQD, Helena
Jim Dunn/Rob Walline, EPA, Denver, 8EPR-EP

ENCLOSURE

A SUMMARY OF

"PROTECTING AMERICA'S WETLANDS: A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH"

August 24, 1993

INTRODUCTION

The Clinton Administration is proposing a comprehensive package of improvements to the Federal wetlands program that reflects a new broad-based consensus among Federal agencies. For years, many have argued that the Federal government badly needed to improve its wetlands program to make it fairer and more effective. But for too long, contradictory policies from feuding Federal agencies have blocked progress, creating uncertainty and confusion. This wetlands package reflects a sharp break through the past gridlock caused by warring Federal agencies and contains a balanced, common sense, workable set of improvements that will make the program simpler, fairer, better coordinated with state and local efforts and more effective at protecting wetlands.

BACKGROUND

The Nation's wetlands perform many functions that are important to society, such as improving water quality, recharging groundwater, providing natural flood control, and supporting a wide variety of fish, wildlife and plants. The economic importance of wetlands to commercial fisheries and recreational uses is also enormous.

The Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. The Nation's wetlands continue to be lost at a rate of hundreds of thousands of acres per year due to both human activity and natural processes. This continued loss occurs at great cost to society.

Notwithstanding the importance of wetland resources, Federal regulatory programs to protect wetlands have caused considerable controversy. Critics of Federal wetlands regulatory programs have effectively characterized those programs as unfair, inflexible, inconsistent, and confusing. Supporters of wetlands protection have responded -- with equal effectiveness -- by emphasizing the environmental and economic benefits associated with protecting the Nation's wetlands.

As both sides have voiced their strongly held opinions, the debate over Federal wetlands policy has become increasingly divisive, with agencies fighting agencies and generating enormous confusion among the public and the states and stalling needed reforms in the program. In short, wetlands policy had become one of the most controversial environmental issues facing the Federal government, slowing work on the reauthorization of the overall Clean Water Act.

A COMPREHENSIVE PACKAGE OF REFORMS

Building upon these principles, the working group has developed a comprehensive package of initiatives that will significantly reform Federal wetlands policy, while maintaining protection of this vital natural resource. This package includes regulatory reforms and innovative, non-regulatory policy approaches; it includes administrative actions that will take effect immediately, and legislative recommendations for Congress to consider during the reauthorization of the Clean Water Act. The Clinton Administration looks forward to working closely with the Congress to implement this new approach to Federal wetlands policy.

The reform package includes the following initiatives:

- To affirm its commitment to conserving wetlands resources, the Administration will issue an Executive Order embracing the interim goal of no overall net loss of the Nation's remaining wetlands resource base, and a long-term goal of increasing the quality and quantity of the Nation's wetlands;
- To increase fairness in the wetlands permitting process, the Corps will establish an administrative appeals process so that landowners can seek speedy recourse if permits are denied without having to go to court;
- To make sure that decisions are made without delay, the Corps will establish deadlines for wetlands permitting decisions under the Clean Water Act;
- To reduce uncertainty for American farmers, yesterday the Corps and EPA issued a final regulation ensuring that approximately 53 million acres of prior converted cropland -- areas which no longer exhibit wetlands characteristics -- will not be subject to wetlands regulations;
- To reduce duplication and inconsistency for American farmers, the Soil Conservation Service will be the lead Federal agency responsible for identifying wetlands on agricultural lands under both the Clean Water Act and the Food Security Act;
- To close a loophole that has led to the degradation and destruction of wetlands, yesterday the Corps and EPA issued a final regulation to clarify the scope of activities regulated under the Clean Water Act;
- To emphasize that all wetlands are not of equal value, yesterday EPA and the Corps issued guidance to field staff highlighting the flexibility that exists to apply less vigorous permit review to small projects with minor environmental impacts;
- To ensure consistency and fairness, the Army Corps of Engineers, the Environmental Protection Agency, the Soil Conservation Service, and the Fish and Wildlife Service will all use the same procedures to identify wetland areas;